IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CRIMINAL NO. 02-71
vs.)	
)	
BILLY RAY ROWLAND and)	
CHRISTEENA JANELL BARKER,)	
)	ORDER
Defendants.)	

THE COURT HAS BEFORE IT two motions to suppress, filed by defendants Billy Ray Rowland and Christeena Janell Barker on April 23, and April 25, 2002, respectively. The United States resisted the motion on May 9, 2002, and the Court held an evidentiary hearing on May 9, 2002. Ms. Barker filed a supplemental resistance in support of her motion on May 19, 2002, to which the government responded on May 23, 2002. The matter is now considered fully submitted.

¹ Mr. Rowland has joined in Ms. Barker's motion.

² Also on May 23, 2002, Ms. Barker filed a resistance to the government's May 23, 2002 supplemental resistance. Specifically, Ms. Barker objects to references made by the government in its supplemental memorandum to portions of a videotape made by the officers at the scene of the investigative stop. Ms. Barker's objection is addressed below.

I. BACKGROUND

Based on the testimony and evidence presented during the hearing, the Court makes the following findings of fact. On December 19, 2001, at approximately 11:28 a.m., the Story County Sheriff's Department dispatch received a report by cell phone that a dark-colored, older model Chevrolet Impala was driving onto the shoulder of Interstate 35 northbound with sheets of paper flapping out the windows on both sides of the vehicle. The caller did not know whether there was a passenger in the vehicle, and described the driver as a male in his 40s.

At 11:44 a.m. Story County Sheriff's Deputy Scott Madison observed a gray 1980s

Oldsmobile at mile marker 121 driving northbound on Interstate 35. Deputy Madison observed the vehicle weaving back and forth in its lane, crossing the center line numerous times and the fog line once. It appeared the vehicle was being driven by a woman.

Due to the recklessness with which the vehicle was being driven, Deputy Madison decided to stop the vehicle. He then activated his emergency lights, at which point another person sat up in the front passenger seat of the vehicle. The driver of the Oldsmobile pulled the vehicle to a stop at 11:47 a.m. at mile marker 124.

Deputy Madison approached the vehicle and asked the driver to step out. The driver complied with his request, and identified herself as Cynthia Rogers.³ She was unable to produce identification, however, and told Deputy Madison that her purse had been stolen. When asked about a driver's license, the driver responded that she had never obtained a driver's license.

³ Through fingerprinting comparison, however, she subsequently was identified as Christeena Janell Barker.

Deputy Madison then approached the male passenger, who correctly identified himself as Billy Ray Rowland. When asked for identification, Mr. Rowland produced an Indian tribal identification card and his Social Security card. Deputy Madison requested that his dispatcher run a records check on both individuals. Deputy Madison was subsequently informed that the computer search did not locate a valid driver's license for either individual, and that Mr. Rowland's driver's license had been suspended by the State of California. The dispatcher also informed Deputy Madison that an arrest warrant was outstanding for Mr. Rowland in the State of Oklahoma.

According to Deputy Madison, a search of the vehicle's license plate number then revealed that title to the vehicle was held in the name of a third party, who, after repeated attempts by the dispatcher, could not be reached.⁴ Deputy Madison stated that it is departmental policy to immediately impound a vehicle when there is a question as to ownership. Specifically, the Impoundment Policy states:

II. Vehicles Which May be Impounded Immediately

Vehicles which a deputy has reason to believe are wrongfully possessed by the person then having control of such vehicles or on which the vehicle identification number or identification numbers of any component part have been altered or defaced, or on which an attempt to alter or deface has been made.

Story County Sheriff's Department Vehicle Impoundment Policy, Plaintiff's Exh. 1 at 2. Deputy Madison and/or other officers who had arrived at the scene then began conducting an inventory search

⁴ Deputy Madison discussed the issue of ownership with Mr. Rowland, who told him he was in the process of buying the vehicle from the titleholder. Mr. Rowland had no documentation to support his claim, however.

of the vehicle, and arranged for it to be towed to Story City. *See id.* at 4. Section IV of the Impound Policy provides that within 24 hours of towing a vehicle that has been impounded, a deputy shall:

- 1. Complete an inventory of all property in the vehicle and a notation of any parts of the vehicle which appear to be missing or damaged. The inventory shall include a list of the contents of each container in the vehicle. Each container shall be opened unless the contents of a particular container are evident from its exterior. If keys, a locksmith, or other means of access are not reasonably available to the deputy, the deputy is authorized to break locks or use other necessary means to gain access to the vehicle and its locked compartments. The inventory is a record which is intended for use in ensuring the safe return of the lawful possessor's property and resolving the questions regarding the condition or contents of the vehicle.
- 2. Add to the vehicle tow-in slip information indicating the circumstances of recovery of the vehicle and notification of the owner if the vehicle is believed to be stolen or operated without the consent of the owner.

Id.

During their initial search of the vehicle, while it was still parked on the shoulder of I-35, officers found a syringe in the glove compartment, rolling papers, razor blades and a small wooden box Deputy Madison testified was consistent with drug usage. During the subsequent search in the impound garage, officers also uncovered a loaded .38 caliber handgun and ammunition. Deputy Madison testified during the hearing that he completed a document entitled, "Inventory of Seized Property," on which he listed items the officers confiscated from the vehicle for use as possible evidence. *See* Defendant's Exh. A. He does not recall completing a full written inventory of the vehicle's contents, however, nor does he recall itemizing parts of the vehicle that were damaged. Story County Sheriff's Sergeant Barry Thomas, who was also present during the inventory search, likewise does not recall completing a written inventory. The vehicle tow slip has not been produced.

In their present motions to suppress, both defendants claim the stop of the Oldsmobile on December 19, 2002 was not justified by reasonable suspicion or probable cause, and that evidence seized during the impound search must be suppressed as fruit of the poisonous tree. They also move to suppress statements made by Ms. Barker while in a Sheriff's department vehicle as violative of Ms. Barker's Fourth and Fifth Amendment rights.

II. APPLICABLE LAW & DISCUSSION

A. Whether Initial Stop of Vehicle was Lawful

"The Fourth Amendment requires that searches and seizures be reasonable." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). Authorities may stop, or "seize" an automobile if they have "reasonable suspicion" that the occupant or occupants have violated the law. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). "An officer has reasonable suspicion sufficient to make a stop without a warrant if the police officer can point to 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *United States v. Owens*, 101 F.3d 559, 561 (8th Cir. 1996) (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). A reviewing court must consider the totality of the circumstances surrounding the stop, mindful of the significance that an experienced law enforcement officer would place on particular facts involved. *United States v. Turpin*, 920 F.2d 1377, 1385 (8th Cir. 1990).

In *Florida v. J.L.*, 529 U.S. 266, 270 (2000), the United States Supreme Court found that an anonymous tip, without more, does not provide "sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop." (Quoting *Alabama v. White*, 496 U.S. 325,

327 (1990)). This is especially true in the present case, where the caller incorrectly identified the make of the vehicle, and the gender of the driver.

Nevertheless, Deputy Madison testified during the hearing that although the initial contact from the dispatcher caused him to watch for a vehicle resembling the description given by the caller, he did not stop defendants' vehicle on the basis of the anonymous tip. Rather, he stopped the vehicle as a matter of public safety after he observed the vehicle repeatedly cross the center divider line, as well as the fog line on the right side of the roadway. The Court finds that Deputy Madison's personal observation of the vehicle being driven in a reckless manner is sufficiently reliable to provide him with "reasonable suspicion" that a traffic safety law was being violated. *Delaware*, 440 U.S. at 663.

Accordingly, the initial stop of the vehicle was conducted within constitutional parameters.

C. Whether Inventory Search was Lawful

Defendants next argue that even assuming the initial stop of the vehicle was lawful, the subsequent inventory search was a mere pretext for an investigatory search. *See United States v. Marshall*, 986 F.2d 1171, 1175 (8th Cir. 1993) (authorities "may not raise the inventory-search banner in an after-the-fact attempt to justify what was . . . purely and simply a search for incriminating evidence"). In support of this argument, defendants note that in conducting their purported inventory search, the officers at the scene failed to comply with departmental policy requiring them to make a "notation of any parts of the vehicle which appear to be missing or damaged." *See* Government Exh. 1 at 4. Furthermore, as set forth above, there is no indication any officer made an itemized list of the contents of the vehicle as required by the written policy, other than those seized as evidence.

The United States Supreme Court has held that when taking custody of a vehicle, police may perform a warrantless search and inventory of the vehicle in order to safeguard the owner's property, protect the department from claims of lost or stolen items, and ensure officers are not at risk from dangerous items left in the property. *Colorado v. Bertine*, 479 U.S. 367, 372 (1987). A reviewing court must look to the totality of the circumstances in determining whether an inventory search is reasonable. *See, e.g., United States v. Rankin*, 261 F.3d 735, 739 (8th Cir. 2001) (citing *Marshall*, 986 F.2d at 1174).

In the present case, the Court finds the officers at the scene were justified pursuant to Story County Sheriff's Department policy in impounding the vehicle due to the fact there was a question as to ownership of the vehicle. *See* Plaintiff's Exh. 1 at 2 (stating deputies may immediately impound vehicles which "a deputy has reason to believe are wrongfully possessed by the person then having control of such vehicle"). Although Mr. Rowland told Deputy Madison he was in the process of purchasing the vehicle from the titleholder, he had no proof of this purchase. Furthermore, Mr. Rowland's trustworthiness was greatly diminished due to his outstanding arrest warrant and suspended driver's license.

The Court also rejects defendants' pretext argument. The Eighth Circuit repeatedly has held that "the presence of an investigative motive does not invalidate an otherwise valid inventory search." *United States v. Garner*, 181 F.3d 988, 991 (8th Cir. 1999); *see also United States v. Lewis*, 3 F.3d 252, 254 (8th Cir. 1993); *United States v. Marshall*, 986 F.2d 1171, 1176 (8th Cir. 1993) (same). Provided law enforcement authorities had a lawful reason to impound the vehicle--in

this case, a question of ownership--the fact they may also have suspected criminal wrongdoing at the time they decided to impound the vehicle is of no consequence.

Similarly, the fact the officers at the scene may not have recorded a complete inventory of the vehicle's contents does not alone render the search invalid. The same argument was dismissed by the court in *Garner*. *See Garner*, 181 F.3d at 992. As in *Garner*, the Story County Sheriff's Department Impoundment Policy "does not require that the results of an inventory search be listed on a specific form nor that the inventory search be conducted in a particular manner." *Garner*, 181 F.3d at 992. Rather, the policy requires that officers simply "complete an inventory of all property in the vehicle." Plaintiff's Exh. 1 at 4. Both Deputy Madison and Sergeant Thomas testified during the hearing that although officers generally "look through" all items in an impounded vehicle, it is customary within the department to record only items they perceive to be particularly valuable. In this case, the items perceived to be "of value" were those items listed on Defendant's Exhibit A as items seized. *See* Defendant's Exh. A; *see also Garner*, 181 F.3d at 992 (accepting officer's statement that "St. Paul police generally only record valuable items discovered during an inventory search").

⁵ During the May 9, 2002 hearing, and in her supplemental resistance memorandum, counsel for defendant Barker made much of the fact that officers failed to inventory perishable meat, a cell phone, a woman's purse, a dog, and an incomplete set of tools. Deputy Madison dismissed the value of the tools by describing the tools as "odds and ends." With regard to the meat, Sergeant Thomas stated that meat is not something he necessarily would perceive to be valuable. He also noted that the woman's purse, and presumably the cell phone contained in the purse, would be considered an item of "personalty," which are inventoried at the county jail as part of the booking process. Lastly, Sergeant Thomas testified that Ms. Barker was in possession of the dog during the inventory search, which might explain why the dog was not included in the list of items seized.

Although the Court may not agree with the officers' assessment of defendants' property, it does not believe their failure to record the above items confirms that their inventory search was pretextual.

D. Whether Statements Made By Ms. Barker Must be Suppressed

Both defendants next move to suppress inculpatory statements allegedly made by Ms.

Barker to Deputy Madison prior to being read her Miranda rights. The parties dispute whether the statements were made in the context of a custodial interrogation.

The entire vehicle stop was recorded by patrol car recorders. In her supplemental memorandum, counsel for defendant Barker attempted to transcribe portions of the videotape depicting the conversation held between Ms. Barker and Deputy Madison. Contrary to an agreement reached by counsel during the May 9, 2002 hearing, however, defense counsel failed to give plaintiff's counsel an opportunity to review the transcription prior to submitting her supplemental brief. Accordingly, plaintiff's counsel then attempted to introduce additional statements from the videotape, to which defense counsel has objected.

Without an accurate transcript of the disputed statements, the Court is unable to make a ruling on this issue at this juncture. Rather than re-opening the record, the Court urges counsel to attempt to develop a transcript covering Ms. Barker's pre-Miranda conversation with Deputy Madison that is acceptable to both parties. If counsel are unable to reach an acceptable stipulation, the Court will schedule a hearing to re-open the record at the earliest possible date.

E. Whether Conversation Between Defendants Must be Suppressed

Lastly, defendants seek to suppress portions of a conversation between Ms. Barker and Mr. Rowland that were recorded while the two were in the back seat of Sergeant Thomas' patrol car.

Sergeant Thomas testified during the hearing that both defendants had been read their Miranda rights prior to this conversation, and the Court has no reason to doubt his testimony.

The Eighth Circuit has held that "a person does not have a reasonable or legitimate expectation of privacy in statements made to a companion while seated in a police car," such that the statements are subject to suppression under the Fourth Amendment. *United States v. Clark*, 22 F.3d 799, 802 (8th Cir. 1994) (citing *United States v. McKinnon*, 985 F.2d 525, 526 (11th Cir. 1993). As explained by the court:

A police car is not the kind of public place, like a phone booth (*e.g.*, *Katz v. United States*, 389 U.S. 347 (1967)), where a person should be able to reasonably expect that his conversation will not be monitored. In other words, allowing police to record statements made by individuals seated inside a patrol car does not intrude upon privacy and freedom to such an extent that it could be regarded as inconsistent with the aims of a free and open society.

Id. Following *Clark*, the Court finds defendants' motion to suppress portions of the conversation held between them in the back seat of Sergeant Thomas' patrol car is appropriately denied.

III. CONCLUSION

For the reasons outlined above, defendants' motions to suppress are denied with respect to evidence seized following the December 19, 2001 traffic stop and subsequent inventory search of the vehicle in which defendants were riding. Defendants' motions to suppress also are denied with respect to the recorded conversation held between Ms. Barker and Mr. Rowland in the back seat of Sergeant Thomas' patrol car. A ruling on the portion of defendants' motion pertaining to statements allegedly made by Ms. Barker to Deputy Madison prior to receiving her Miranda warnings is deferred pending

the Court's receipt of a stipulated transcript. If counsel are unable to reach such a stipulation by Monday, June 3, 2002, counsel should contact the Court to arrange for a limited evidentiary hearing at the earliest possible date.

IT IS SO ORDERED.

Dated this 30th day of May, 2002.

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nited States District